

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
RAMON MORALES and TONY A.
GERGES,

Plaintiffs,

-against-

FOURTH AVENUE BAGEL BOY, INC.,
d/b/a Steve's Bagels, and STEVEN
NATALE,

Defendants.

-----X
TARYN A. MERKL, United States Magistrate Judge:

Plaintiffs Ramon Morales and Tony A. Gerges ("Plaintiffs") initiated this case against Defendants Fourth Avenue Bagel Boy, Inc., doing business as Steve's Bagels, and Steven Natale on June 28, 2018 ("Defendants"). (*See* Complaint, ECF No. 1.) Plaintiffs seek, *inter alia*, damages for unpaid wages pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA"), and the New York Labor Law, Art. 6 § 190 *et seq.* and Art. 19 § 650 *et seq.* ("NYLL"). (*Id.*)

On April 8, 2022, the undersigned Magistrate Judge entered an Order directing Plaintiff Gerges to attend an in-person status conference scheduled on April 28, 2022. (Apr. 8, 2022 ECF Minute Entry and Order.) However, Plaintiff failed to attend the conference, and Plaintiff's counsel represented that he had not heard from Plaintiff since notifying him of the scheduled conference after the April 8, 2022 status conference. (Apr. 28, 2022 ECF Minute Entry and Order.) Plaintiff Gerges's absence follows recent events of concern in the case, including *pro se* Defendant Natale's filing a letter on behalf of Plaintiff seeking to relieve Plaintiff's counsel and close the case. (Mar. 23, 2022 Natale Letters, ECF No. 67.) Those letters suggested that the case as to Mr. Gerges had been

ORDER
18-CV-3734 (DLI) (TAM)

settled out of court, despite the lack of Court approval of a settlement as required under the FLSA, and counsel's prior representation that Plaintiff Gerges had accepted a larger settlement amount, which may still be available. (*See* Mot. for Settlement Approval, ECF No. 65; Mar. 23, 2022 Natale Letters, ECF No. 67; *see also* Mar. 29, 2022 ECF Order (referring these motions); Apr. 28, 2022 ECF Minute Entry and Order.)

An in-person status conference will take place on **May 19, 2022, at 12:00 p.m.** before Magistrate Judge Taryn A. Merkl. **Plaintiff Gerges is directed to personally appear at the status conference together with his lawyer.** The courtroom will be posted on the docket ahead of the conference. In anticipation of the status conference on May 19, 2022, Plaintiffs' counsel is respectfully directed to serve the Court's April 28, 2022 Minute Entry and Order, along with this Order, on Plaintiff Gerges at his last known mailing and email addresses. Plaintiffs' counsel is also directed to attempt to call and/or text Plaintiff, and to inform him that because of his failure to attend the April 28, 2022 status conference, in violation of a Court order, and due to his non-responsiveness to his lawyer, he must personally appear at the May 19, 2022 status conference. Plaintiff Gerges is respectfully advised that his failure to do so, in violation of this Court's express order, may result in this Court's recommending that the case be dismissed. *See* Fed. R. Civ. P. 41(b) ("If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.").

Plaintiff Gerges is being given one last chance to comply with the Court's orders. Unless Plaintiff himself appears at the May 19, 2022 status conference, this Court may recommend that the case be dismissed without prejudice for failure to prosecute under Federal Rule of Civil Procedure 41(b).

SO ORDERED.

Dated: Brooklyn, New York
April 28, 2022



TARYN A. MERKL
UNITED STATES MAGISTRATE JUDGE